

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-206143.3

DATE: September 9, 1982

MATTER OF: Pope Maintenance Corporation

DIGEST:

1. The determination of the Government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the procuring officials who are generally more familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. The fact that the protester performed the procured services over a long period of time does not automatically demonstrate that the protester is more familiar with the conditions of the procurement.
2. The protester has the burden of showing that the RFP does not reflect the agency's minimum needs and that offerors were treated unequally.
3. While discussions, when conducted, must be held with all offerors in the competitive range, the same detailed discussions need not be held with all such offerors since the degree of the deficiencies in the acceptable proposals will vary.

Pope Maintenance Corporation (Pope) protests against request for proposals (RFP) No. F09650-81-R0200 (0200) issued by the Department of the Air Force, Robins Air Force Base (AFB) (Air Force), for services and supplies necessary to maintain and repair powered and nonpowered ground support equipment at Robins AFB. Notwithstanding Pope's protest, the Air Force made the determination, pursuant to Defense Acquisition Regulation § 2-407.8(b) (3) (1976 ed.), that award to Dyneteria, Inc., was in the best interest of the Government since "delay * * * would cause adverse operational impact on essential mission performance."

Pope alleges that the RFP contains inaccurate and incomplete historical data. Pope contends this raises questions concerning the estimate of minimum manning. In addition, Pope submits that there was unequal treatment of the offerors.

We do not find the protest to have merit.

Background

Pope, the incumbent contractor, has been performing the ground support maintenance at Robins AFB since 1974. Essentially, the performance consists of making sure that the equipment necessary for each aircraft is in working order and in place, prepositioned around the aircraft, at the designated time.

On July 3, 1980, the Air Force issued RFP No. F09650-80-R0029, which solicited services and supplies necessary for ground support maintenance at Robins AFB. Numerous questions were raised by Pope in regard to this RFP. After six amendments and several meetings, the RFP was canceled and the Air Force entered into an interim contract with Pope to give the Air Force time to obtain sufficient data to draft a new solicitation.

On August 28, 1981, RFP 0200 was issued. Pope submits that this RFP was "nearly identical to the final format of the [previous] solicitation." However, we note that the Air Force, on February 5, 1982, agreed to allow Pope, in exchange for withdrawing a January 20, 1982, protest, to gather and submit historical data by February 26, 1982. Then, essentially, the Air Force would amend the RFP, postponing it indefinitely, audit and verify the data, make any necessary revisions to technical exhibit No. 8 (Exhibit 8) of the statement of work based on the data and solicit revised technical and price proposals from all acceptable offerors prior to best and final offers. Exhibit 8 contained historical data concerning average annual ground support equipment (GSE) positions, deliveries, respots (relocations) and prepositionings; test flight/departures; direct man-hours required for ready line and unscheduled maintenance; and deployments. Once this data was received and reviewed by the Air Force, the RFP, including Exhibit 8, was revised

through amendment No. 7. Subsequently, Pope questioned the Air Force in regard to the revision of Exhibit 8. At that time, Pope, having determined that the Air Force was not going to make any further revisions, filed a protest with our Office.

Inaccurate and Incomplete Historical Data

Pope, based on its experience, argues that the RFP does not include the best available performance data to convey an accurate picture of what these services entail. In this connection, Pope believes that, since there is a discrepancy between Pope's historical performance data and that used by the Air Force in the RFP, the estimate of minimum manning must not have been based on reasonable data. It is Pope's belief that the purpose of its 1981 interim contract was to obtain this data and incorporate it in the RFP. Pope contends that the data in the revised Exhibit 8 is "either totally inaccurate or so misleading as to defeat the purpose of the February 5 Agreement."

Specifically, Pope submits that the Air Force figure of 83,690 specific tasks in Exhibit 8 for pick-ups, deliveries, respots, service and returns under paragraph 5.1.1.1 of section C-5 of the statement of work is much lower than Pope's documented figure of 104,748 tasks of this nature. Pope surmises that the difference suggests that the Air Force ignored those task requests that could not be completed when ordered. Pope argues that there is a cost impact associated with those requests since they still must be recorded and processed and an effort must be made to find a substitute if possible. Pope points out that incomplete tasks are included in paragraph 5.1.1.2 for prepositionings of GSE. Also, Pope cannot understand how the Air Force arrived at 380 average annual trips to the battery shop. Based on data gathered by Pope, Pope estimates that there will be 840 trips.

Pope's final argument is that Exhibit 8 should have been revised to include an accurate estimate of direct man-hours required for daily performance of ready line maintenance (essentially the servicing, inspecting, operational checking and adjusting of GSE). Pope submitted documentation, the names and clock hours

for those employees used in ready line maintenance, which indicated that over 35,000 man-hours would be required annually. Initially, Exhibit 8 included a 12,000-hour figure which the Air Force subsequently acknowledged was not accurate. Revised Exhibit 8 did not include an estimate of the hours for this task. Rather, through a "Note," it advised offerors to use the occurrences projected in paragraphs 1 and 2 which referred to paragraphs 5.1.1.1 and 5.1.1.2, respectively. It is Pope's position that the Air Force's failure to include an estimate which Pope characterizes as "the most important aspect of [Exhibit 8], as revised" will result in unrealistically low prices that do not adequately reflect what is needed to perform the contract since offerors would only have inaccurate data on which to rely.

It is the Air Force's position that the RFP and Exhibit 8 contained current complete and accurate historical data. The Air Force contends that there is no inconsistency between paragraphs 1 and 2 in Exhibit 8. The projection of paragraph 1's estimate (pickups, deliveries, respots, service and returns) was based on the actual number of tasks performed and does not include those instances where performance was requested but could not be completed due to the nonavailability of equipment. In addition, the Air Force submits that paragraph 2's figure (prepositionings), also based on actual number of tasks performed, includes the tasks which were not completed because of nonavailable equipment since the statement of work, paragraph 5.1.1.2, includes those tasks. With respect to the average annual trips to the battery shop, the Air Force argues that its figure was based on the number of batteries actually picked up and turned in and was adjusted upward to allow for some additional trips. The figure includes slightly in excess of one trip per battery issued by the shop. In regard to the ready line maintenance, the Air Force explains that after Pope's data was reviewed, it was determined that an employee's actual clock hours would not, in and of themselves, reflect the required hours for ready line maintenance unless that is all an employee actually did for 8 hours a day. In this circumstance, the Air Force states that a prospective contractor would get a more accurate estimate if it would project ready line maintenance by using the estimated number of tasks set forth in Exhibit 8, paragraphs 1 and 2, and the statement of work.

The determination of the Government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are generally more familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. On-Line Systems, Inc., B-193126, March 28, 1979, 79-1 CPD 208; METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. While one can reasonably argue, as Pope does, that a contractor who has been performing services over a long period of time has extensive experience in the performance of that service, this, alone, does not automatically demonstrate that the contractor is more familiar with the conditions of the procurement, since, at the same time the contractor is performing, the procuring agency is administering the contract. Our Office, therefore, will not question agency decisions concerning those matters unless they are shown to be clearly unreasonable. Partical Data, Inc.; Colter Electronics, Inc., B-179762; B-178718, May 15, 1974, 74-1 CPD 257. A mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset agency determinations. Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214. The protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

Pope has not adequately proved that the RFP does not reflect the Air Force's minimum needs. The Air Force has admitted that its figure (83,690) for pickups, deliveries, respots, services and returns (paragraph 5.1.1.1) set forth in Exhibit 8, paragraph 1, did not include incomplete tasks due to nonavailable equipment. The rationale was that those tasks, while some amount of effort would be expended, required considerably less effort than that expended when a task was completed as described in paragraph 5.1.1.1. Moreover, we note that paragraph 5.1.1.1 did not contain any reference to incomplete tasks. However, on the other hand, paragraph 5.1.1.2 (prepositionings) specifically advises prospective offerors that they should be concerned with "availability/nonavailability" of ground support equipment. This explains why the Air Force figure (Exhibit 8, paragraph 2) for prepositionings included incomplete tasks. In this light, the Air Force was consistent in its presentation of the historical data.

With respect to the figures used by the Air Force in Exhibit 8, paragraphs 1 and 2, the record supports the Air Force's statement that each was based on the actual number of tasks performed. The figures used by the Air Force were based on the results of an audit performed by the Air Force on portions of the historical data submitted by Pope. Prior to using any of the historical data, the Air Force verified the data to determine its validity and accuracy. We will not question these figures based solely on Pope's general disagreement with them since that alone does not show the figures to be unreasonable.

In regard to the trips to the battery shop, we, once again, find that the Air Force's figure has not been shown to be unreasonable. Even though Pope argues that there are numerous trips to obtain batteries for immediate needs which Pope believes are not included in the Air Force figure, we are not persuaded that these "numerous trips" would amount to the difference between Pope's estimate (840) and the Air Force's estimate (390). As noted above, his figure was based on the actual number of batteries picked up and turned in and was adjusted upward slightly. Apparently, the Air Force position is that, because of the shop's location, trips could be made in conjunction with other tasks within the area and coordination in this instance is deemed critical. Moreover, the Air Force believes that use of the telephone to check on a battery's availability is a must and this procedure would essentially limit the number of trips to the shop to the number of batteries turned in and picked up.

With respect to the performance of ready line maintenance, Pope has not shown why the Air Force's deletion from Exhibit 8 of the original 12,000-hour figure and substitution of a "Note," advising each offeror to use paragraphs 1 and 2 in accordance with the appropriate portion of the statement of work to estimate hours for ready line maintenance, was unreasonable or would result in an unrealistically low price. The deletion of the hour figure was based on the Air Force's determination that the figure was inaccurate. Furthermore, we note that the Air Force also concluded, after a review of the relevant historical data, that, since the total man-hours for ready line maintenance are contingent

on the number of employees and the rate at which each works, the data may not accurately reflect the average manhours requirement. The Air Force believes that use of the data contained in Exhibit 8, paragraphs 1 and 2, and the statement of work would result in a more accurate estimate, since the requirement is closely related to the dispatch of equipment and the management decision concerning how many equipment inspections will be performed and the testing procedures to be implemented. We do not find this reasoning to be unreasonable. Pope's argument that the failure to use an estimate of hours will result in unrealistically low prices is rejected, since it has not been shown, see above, that the data contained in Exhibit 8, paragraphs 1 and 2, is inaccurate or unreasonable.

Unequal Treatment

It is Pope's position that there was unequal treatment of the offerors. Pope submits that the Air Force divulged its manning estimates to some offerors while withholding it from others. Furthermore, Pope alleges that the Air Force advised some offerors who had inadequate responses in their technical proposal manning charts and allowed changes in the technical proposals so that the proposals would be acceptable. However, Pope states that the Air Force failed to advise those offerors who exceeded the Air Force's minimum manning estimate of that fact. In support, Pope cites Sperry Rand Corporation, 56 Comp. Gen. 312 (1977), 77-1 CPD 77. In addition, Pope states that the Air Force furnished weekend work manning estimates to an offeror and only after lengthy discussions furnished it to Pope. Pope contends that, with that exception, it has not been given any of the Air Force's manning estimates. Pope believes that all the manning estimates should be disclosed since it is unfair to disclose estimates in one area and not the others. Moreover, Pope argues that all offerors should be provided with the same information; to do otherwise, is to treat the offerors unequally.

The Air Force's position is that all the offerors were treated equally. The Air Force denies that the manning estimates were given to some offerors and not to others. Because the Air Force gave the estimate of total

weekend personnel to one offeror during negotiations, it then gave it to all the other offerors during negotiations with them. However, the Air Force advises that other estimated manning tables were not given to anyone outside of the technical evaluation panel. In addition, the Air Force denies that it coached any offerors regarding inadequacies in their technical proposal manning charts. Furthermore, it is the Air Force's position concerning proposals that exceed minimum estimates or requirements that, unless that excess shows a misunderstanding of the requirement or in some way fails to conform to the minimum standards, the proposal is acceptable. The Air Force posits that, "[i]n this instance, it is only logical that the incumbent contractor, who has been performing this function since 1974, would be able to submit an acceptable technical proposal requiring little or no revisions."

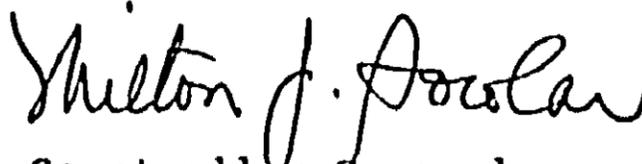
Based on the record before us, we do not find unequal treatment of the offerors. As noted above, it is the protester's burden to affirmatively prove its case. Reliable Maintenance Service, Inc.--request for reconsideration, supra. Pope has not met its burden of proof.

While it is true that the weekend work manning estimate was disclosed, we note that all offerors, including Pope, were given this estimate. In this connection, we are aware of no statute or regulation that requires, contrary to Pope's position, that such disclosure automatically results in the disclosure of all manning estimates to the offerors.

Furthermore, Pope's reliance on Sperry Rand Corporation, supra, is misplaced. In that case, we found that the agency erred in failing to advise Sperry that its hardware approach was potentially excessive and that a firmware approach, which was not mentioned in the RFP, might be considered acceptable. Therefore, Sperry's proposal indicated that it did not understand the agency's needs. Here, the situation is different. Pope's proposal was found to be acceptable and, where its manning levels exceeded the Air Force's manning estimates, it was not found to be excessive to the extent that it demonstrated a lack of understanding of the Air Force's needs.

Although there may have been more detailed discussions with other offerors, the Air Force was not required to hold the same kind of detailed discussions with all offerors since the degree of the deficiencies, if any, found in the acceptable proposals will obviously vary. RAI Research Corporation, B-184315, February 13, 1976, 76-1 CPD 99. Rather, what is required is that the agency establish a common cutoff date for receipt of revised proposals and provide an opportunity for all competitive range offerors to submit a revised proposal by that date. See University of New Orleans, 56 Comp. Gen. 958 (1977), 77-2 CPD 201. The Air Force satisfied this requirement.

Pope's protest is denied.



Acting Comptroller General
of the United States